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OPTIMA TAX RELIEF, LLC**

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

**OPTIMA TAX RELIEF, LLC, a
Delaware Limited Liability Company**

Plaintiff.

V.

**FINANCIAL FREEDOM ADVISORS,
LLC, an Illinois Limited Liability
Company, SAFE HARBOR
FINANCIAL CONSULTING, LLC, an
Illinois Limited Liability company,
BROCK FLAGSTAD, an individual,
BRIAN BARSS, an individual and
DOES 1 through 10, inclusive;**

Defendants.

| Case No. 8:15-cv-1327

COMPLAINT FOR:

1. **Trade Dress Infringement**
[15 U.S.C. § 1125(a)];
2. **Direct Copyright Infringement**
[17 U.S.C. § 106];
3. **Contributory Trade Dress Infringement**
[15 U.S.C. § 1125(a)];
4. **Derivative Copyright Infringement;**
5. **Unfair Competition**
[15 U.S.C. § 1125(a)];
6. **Unfair Business Practices**
[Cal. Bus. Code § 17200, *et seq.*];
and
7. **False Advertising**
[Cal. Bus. Code § 17500, *et seq.*]

DEMAND FOR JURY TRIAL

1 1. Plaintiff Optima Tax Relief, LLC (“Optima”), by and through its
 2 attorneys, and for a Complaint against the Defendants, states and alleges as follows:

3 **I. SUMMARY OF ACTION**

4 2. This is an action arising out of defendants’ wrongful use of a
 5 misleading, confusing, and infringing copy of Optima’s most effective and widely
 6 used advertising webpage. Optima operates both a website homepage and numerous
 7 advertising webpages located under the domain optimataxrelief.com. It is on these
 8 webpages that Optima promotes and offers its tax relief services to numerous
 9 consumers. Among these webpages is a distinctive and arbitrary design of an
 10 advertising landing page that is dynamically optimized for desktop and mobile
 11 devices. Defendants have contributed to and profited from a wrongful copy of
 12 Optima’s landing page and published it at tax-relief-experts.com (the “Infringing
 13 Website”), using this wrongful copy to benefit from a false association with Optima,
 14 a market leader in the Tax Relief Industry.

15 3. The Infringing Website is owned and operated by Channel Clarity, Inc.
 16 and Channel Clarity Holdings, LLC (collectively “Channel Clarity”), which act
 17 together as a marketing company that use the Infringing Website to falsely pose as a
 18 tax relief service so it can develop and find “leads” or potential clients. Channel
 19 Clarity then passes the “leads” or information from the potential customers to its co-
 20 owned lead refiner, Financial Freedom Advisors, LLC, which receives customer
 21 inquiries and prepares them to sign up for tax debt relief services with Safe Harbor
 22 Financial Consulting, LLC, a direct competitors with Optima. Optima is informed
 23 and believes that Financial Freedom and Safe Harbor are aware of, complicit in, and
 24 have induced and/or provided material assistance to Channel Clarity in its
 25 infringement of Optima’s rights, including but not limited to directing Channel
 26 Clarity to copy Optima’s successful websites and advertising operations.

27

28

1 **II. PARTIES**

2 4. Plaintiff Optima is a Delaware Limited Liability Company with its
 3 principal place of business at 3100 South Harbor Boulevard, Suite 250, Santa Ana,
 4 California.

5 5. Defendant Financial Freedom Advisors, LLC (“Financial Freedom”) is
 6 an Illinois limited liability company, also having its principal place of business at
 7 215 West Ohio Street, 6th Floor, Chicago, IL 60601.

8 6. Defendant Safe Harbor Financial Consulting, LLC (“Safe Harbor”) is
 9 an Illinois Limited Liability Company, having previously maintained a principal
 10 place of business and corporate headquarters at 939 West North Avenue, Suite 750,
 11 Chicago, IL 60642, and currently having a secondary place of business at 2480 W.
 12 26th Avenue, Suite 120-B, Denver, CO 8021.

13 7. Defendant Brock Flagstad is the CEO and majority owner of Channel
 14 Clarity and the owner and manager of Financial Freedom.

15 8. Defendant Brian Barss is the lead salesperson for Financial Freedom.

16 **III. JURISDICTION AND VENUE**

17 9. This Court has subject matter jurisdiction under the Lanham Act, 15
 18 U.S.C. § 1121, under the Copyright Act of the United States, 17 U.S.C. § 101, *et*
 19 *seq.*, and under 28 U.S.C. §§ 1331 and 1338(a). Subject matter jurisdiction over
 20 Optima’s related state and common law claims is proper pursuant to 28 U.S.C. §§
 21 1338(b) and 1367.

22 10. This Court has personal jurisdiction over Defendants because
 23 Defendants have targeted their harmful acts and infringement at Optima’s business
 24 in this district. On information and belief, this Court further has jurisdiction over
 25 Defendants because they availed themselves of the opportunity to conduct business
 26 in California through their use of the Infringing Website in order to solicit tax relief
 27 customers within this District and their knowing support of Channel Clarity’s
 28 operation of the Infringing Website.

1 11. This district is the proper venue pursuant to 28 U.S.C. § 1331 because
 2 Plaintiff resides herein, a substantial part of the acts or omissions giving rise to
 3 Optima's claims occurred in this District, on information and belief, Defendants are
 4 subject to jurisdiction within the district, do business in this District, and used the
 5 Infringing Website at issue in this case as part of sales and offers to sell within this
 6 District.

7 **IV. GENERAL ALLEGATIONS**

8 A. **Optima's Business and Website.**

9 12. Founded more than three years ago, Optima is one of the leading tax
 10 resolution firms in the nation. Optima and its team of representatives, enrolled
 11 agents, tax attorneys, and other tax professionals have shared a single goal since
 12 Optima's inception - to help Americans nationwide deal with aggressive collection
 13 policies of the State and Federal tax agencies. The vast experience of the
 14 knowledgeable, friendly, and experienced Tax Team at Optima works with
 15 Optima's clients to discuss and understand each individual case, analyze the results,
 16 and propose the best course of action to take away the burdens caused by tax
 17 problems, bring the client within compliance, and create solutions that work.

18 13. In doing so, Optima puts great emphasis on its personal customer
 19 service and experienced professional staff to keep clients informed and empowered
 20 throughout the entire process. Optima's passion and dedication to Customer Service
 21 is at the heart of its ten Core Values.

22 14. Optima leverages its core competencies in Tax Negotiation &
 23 Settlement, Audit Defense, Tax Levies & Liens, Wage Garnishment, Back Taxes,
 24 and End Penalties & Interest in order to provide its clients with excellent service
 25 geared to the resolution of the clients' tax problems. Optima's "Two Phase"
 26 Approach of Investigation and Resolution is designed to stop aggressive tactics by
 27 tax agencies, gather and file all of the necessary documentation for full compliance,

1 build a case to support an optimal resolution strategy, and present the clients' case to
 2 the tax agency for the best attainable financial outcome.

3 15. When clients with tax problems choose Optima, they get in-house tax
 4 professionals with years of experience that won't outsource the clients' problems to
 5 third parties, a 15 day money back satisfaction guarantee, a BBB accredited
 6 company, and the power of one of the leading tax resolution firms in the country.

7 16. Optima's website, located at optimataxrelief.com (the "Optima
 8 Website"), is an integral part of its marketing and outreach to potential clients and
 9 its communication with current clients. The Optima Website is used to provide
 10 clear information, helpful advice, a client communication portal, and a ready
 11 identification of the source of Optima's services.

12 17. The most effective advertising page on the Optima Website for
 13 soliciting new clients is the desktop and mobile browser optimized landing page
 14 appearing at app.optimataxrelief.com/first-step/ (the "Optima Landing Page"). The
 15 Optima Landing Page is a distinct page that drives the vast majority of Optima's
 16 online customer base and is the primary webpage Optima advertises on the Google,
 17 Yahoo!, and Bing search engines, such that consumers that view and click through
 18 Optima's search result advertisements are taken to the Optima Landing Page.
 19 Optima began use of the Optima Landing Page on or about September 13, 2013. It
 20 is from the success of this distinct website that Optima continues to achieve success
 21 with its online advertising efforts. A true and accurate screenshot of the Optima
 22 Landing Page is attached hereto as **Exhibit A**.

23 18. The Optima Landing Page features multiple elements that comprise a
 24 distinctive non-functional trade dress "look and feel" or aesthetic whole that
 25 distinguishes the Optima Landing Page from the web advertising of third parties and
 26 signifies Optima as the source of the advertising and services provided thereunder.
 27 The Optima Landing Page further incorporates original expressions of the ideas and
 28 content contained therein. As a result, the Optima Landing Page is eligible for

protection under the Lanham Act and the Copyright Act. Furthermore, the U.S. Copyright Office issued Optima the Federal Copyright Registration number VA0001938343 for the Landing Page as “Optima Tax Relief Multistep Landing Page Q3 2013” on or about December 2, 2014.

19. Optima also uses the Optima Website to give away some advice on its website in order to help those seeking tax relief. Optima provides both a frequently asked questions section to describe its services and the kind of lawful tax help that its customers can find from Optima or other reputable professionals, and an article warning of the dangers of unscrupulous companies that prey on the vulnerable people seeking tax relief. Among those companies to be wary of, Optima warns of companies that (1) require large upfront payments without satisfaction guarantees; (2) misrepresent the likelihood of Offer in Compromise settlements (which only 1 of every 3 or 4 applicants receive); (3) those that pretend to provide tax relief services but are actually just marketing companies that sell customers’ information to third parties without any control or input on the actual service that the customer receives; and (4) the outright fraudsters that steal, cheat, and lie to their customers, taking their money and providing no real services in return.

B. The Infringing Website and Misleading Advertising.

20. Channel Clarity and Financial Freedom act as a marketing company for Safe Harbor. As part of their marketing efforts, Channel Clarity publishes a website at tax-relief-experts.com (the “Infringing Website”) which is clearly copied from the Optima Landing Page. On information and belief, Channel Clarity has further purchased paid search results advertising that create sponsored links to the Infringing Website which are placed with search engines such as Google, Bing, and Yahoo (in the majority of cases either directly above or below links to the Optima Landing Page), causing consumer confusion and direct harm to Optima’s brand and advertising platform. A true and correct screenshot of the Infringing Website is attached hereto as **Exhibit B.**

1 21. Channel Clarity's copying of the Optima Landing Page is readily
 2 apparent when the Infringing Website is compared and contrasted with the vastly
 3 different advertisement that was previously published by Channel Clarity (for the
 4 benefit of Financial Freedom and Safe Harbor) at the same address until at least July
 5 2014 ("Defendants' Old Website."). A true and correct version of Defendants' Old
 6 Website as it appeared and was published at tax-relief-experts.com on or about July
 7 25, 2014 is attached hereto as **Exhibit C**. On information and belief, Channel
 8 Clarity replaced Defendants' Old Website with the Infringing Website on or about
 9 September 2014, approximately one year after Optima began use and publication of
 10 the Optima Landing Page.

11 **C. Defendants Use Optima's Landing Page to Have Channel Clarity**
 12 **Redesign Tax Relief Experts.**

13 22. Prior to the launch of the Infringing Website, in or about 2013, Safe
 14 Harbor sent information regarding its competitors in the tax relief industry to
 15 Financial Freedom. This communication identified Optima as one such competitor.
 16 Following this communication from Safe Harbor, Brock Flagstad, CEO of Channel
 17 Clarity and the owner of Financial Freedom, reviewed Optima's websites.

18 23. In a subsequent January 2014 email with the subject line "interesting",
 19 Brian Barss of Financial Freedom passed additional analysis of Optima to Brock
 20 Flagstad's Channel Clarity email account. The email specifically pointed to the
 21 BBB review of Optima, noting 15 new complaints between March 2013 and January
 22 2014. Barss then estimated Optima received "probably a complaint for every MM
 23 they're making per/mo." A true and correct copy of this January 2014 email (as
 24 produced by Channel Clarity) is attached hereto as **Exhibit D**.

25 24. Prior to the launch of the Infringing Website, and after prompting from
 26 Financial Freedom's Barss and the competitor identification provided by Safe
 27 Harbor, Channel Clarity performed a "competitive analysis" of tax debt relief
 28 websites. As part of this process, Channel Clarity compiled a 35 page "Tax Debt

1 Site CRO Competitive Analysis Powerpoint Presentation.” Of the pages containing
 2 references to competitor websites, more than half include references to or pictures of
 3 Optima and Optima’s Landing Page. Among other points relating to the design the
 4 Optima Landing Page, Channel Clarity noted that:

- 5 • “OptimaTax / Supermoney have mobile responsive sites”;
- 6 • Using pictures from the Optima Landing Page with commentary on a
 7 “1 Step At A Time Format” in which there are “Only 3 steps” and the
 8 3rd step “You qualify” is smart”; and
- 9 • OptimaTax has no links on the homepage (except privacy policy &
 10 stuff at the very bottom).

11 A true and correct copy of Channel Clarity’s “Competitive Analysis” (as
 12 produced by Channel Clarity) is attached hereto as **Exhibit E**.

13 25. On information and belief, Channel Clarity made changes to the
 14 “Mobile Form” of the Infringing Website in line with instructions and prompting
 15 from Financial Freedom and Safe Harbor by copying the Optima Landing Page.
 16 Specifically, Rachael Pedersen, Channel Clarity’s Campaign Account Manager, sent
 17 two screenshots of the mobile version of the Optima Landing Page to a Channel
 18 Clarity Website User Interface Designer with instructions to use the screenshots as
 19 examples of how to change the “Mobile Form” of the Infringing Website. A true
 20 and correct copy of this message, as produced by Channel Clarity, is attached hereto
 21 as **Exhibit F**.

22 26. On or about September 8, 2014, as part of an email chain discussing the
 23 creation of a mock-up replacement for the existing tax-relief-experts.com website,
 24 Channel Clarity’s CEO, Brock Flagstad, sent stating: “I think I would rather see the
 25 initial test look more like this <http://app.optimataxrelief.com/firststep/...>” (*i.e.* the
 26 Optima Landing Page). In response to Mr. Flagstad’s direction to copy the Optima
 27 Landing Page, Neil Flinchbaugh, Channel Clarity’s Web Optimization Manager,
 28 responded “Oh you mean change the whole site up—absolutely! Of all the tax sites

I've looked at I think that's the best one. I'll mock something up." The next day, Mr. Flinchbaugh sent a "wireframe for a radical redesign" contained in two PDFs titled "Optima Test - Steps.pdf" and "Optima Test - Homepage.pdf." In discussing these designs, Mr. Flinchbaugh admitted that "We might have to change some of the details in the copy and stuff" and specifically called out copying of Optima's Landing Page, stating "The little circle on the right with the arrow pointing up is meant to follow the screen the way Optima's does." A true and correct copy of Mr. Flinchbaugh's September 8, 2014 and September 9, 2014 emails (as produced by Channel Clarity) are attached hereto as **Exhibit G.**

27. Since the 2014 redesign of tax-relief-experts.com to copy the Optima Landing Page, Financial Freedom has generated hundreds of thousands of dollars in business for Safe Harbor using customers responding to the Infringing Website. Apart from any separate knowledge they may have had of Channel Clarity's copying of the Optima Landing Page, Financial Freedom and Safe Harbor became aware of Optima's claims of infringement in 2015, but have continued their material support for the underlying infringement by continuing to acquire *all* the customer leads generated from the Infringing Website.

D. Comparisons Show Defendants' Copying and Infringing.

28. The Infringing Website broadly copies and mimics both the expression and the look and feel of the Optima Landing Page, including but not limited to the following elements of a webpage designed to advertise Tax Relief services:

- a. A first screen comprised of a landscape background in blue with a curved green ground element at its bottom which is overlaid with centered textual elements including (1) the company name; (2) a toll free number; (3) a slogan in blue lettering saying the company will "Solve Your" tax problems; (4) the question "How much tax debt do you" have or owe in black text, directly above;

1 and (5) a white drop down menu box from which a visitor can
 2 select ranges of tax debt.



12 **Optima Landing Page**

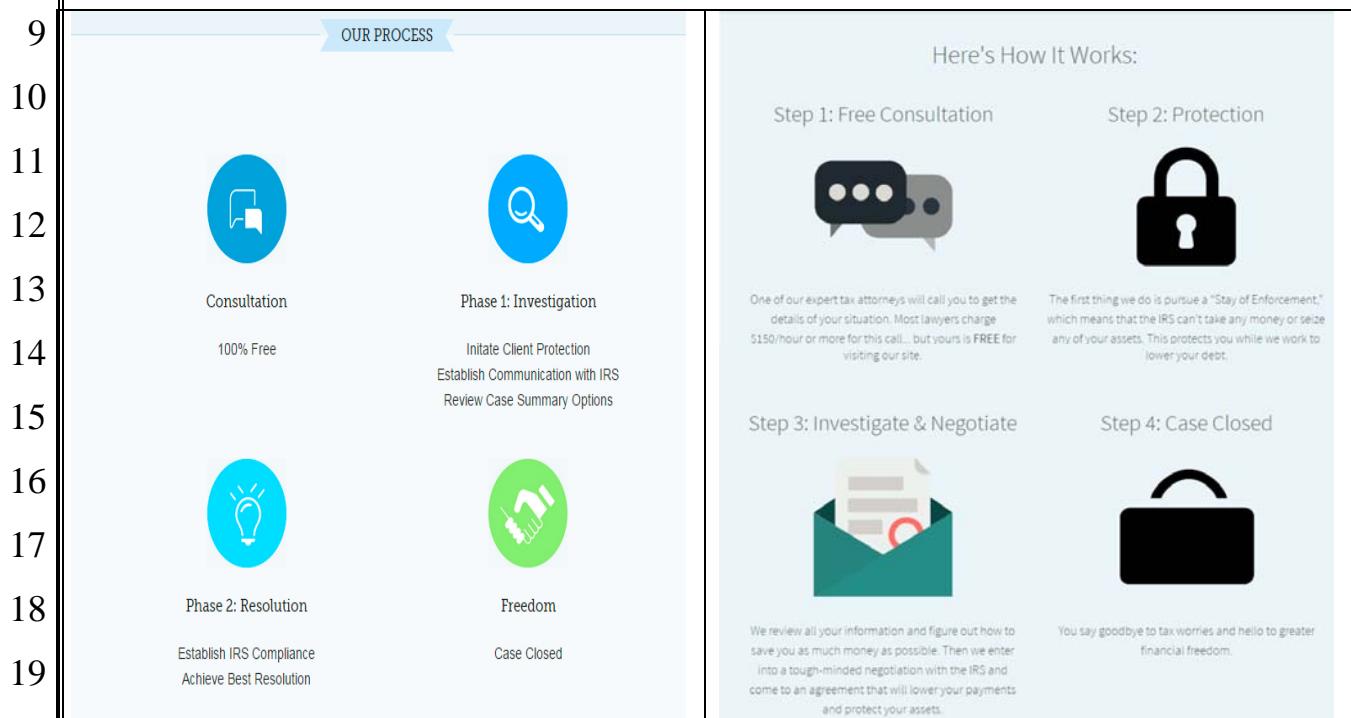


22 **Defendants' Infringing Website**

23 Notably, Channel Clarity's Infringing Website uses a "Hero Image" (main
 24 image for the first section) that copies the Optima Landing Page's vector image of a
 25 blue horizon over a curved green field, rather than following the plan set forth in
 26 Channel Clarity's "Competitive Analysis" PowerPoint to alter its prior Hero Image
 27 from a photograph of "man who looks frustrated" and instead follow the lead of
 28

1 multiple competitors that that used a photographic “hero image of people who look
 2 happy, carefree (especially with kids—sort of a “take care of your family”
 3 message.”)

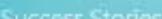
4 b. A subsequent section over a pale blue background describing a
 5 process for tax relief with four steps arranged in a square [(1) a
 6 free consultation step, (2) a step involving “protection”, (3) a
 7 step involving resolution with IRS, and (4) a “Case Closed”
 8 step] using simple graphic symbols for each step.



Optima Landing Page

Defendants' Infringing Website

22 c. A subsequent section over a blue background comprised of
 23 customer “Success Stories” presented in two columns.
 24
 25 ///
 26 ///
 27 ///
 28

1		SUCCESS STORIES	2	
3	4	 Valerie ★★★★ Satisfaction Guaranteed!! I have had problems with the IRS keeping my tax refunds for years. This was a debt that I didn't owe, as I was waived of it in a court of law. I couldn't get help from anyone with this, tax preparers would send letters, call the IRS etc. Everything we tried did no good. Then one day my Dear Mother of 83 years had seen an Ad on tv from Optima Tax Relief and called me with their phone number. I decided to give it one more try and call these people to see if they could help me. I had almost given up and figured there was no help for this they would keep my tax refunds from now on. I thank God for my Mother (Laverne) and for the OTR!!! Not only did they relieve me of this debt for life but also had gotten my tax refunds for the past two years back! I would highly recommend this Company to anyone! Satisfaction Guaranteed!	5	 Melissa ★★★★ OPTIMA WILL HELP YOU Thanks again so much for going the extra mile on my case I was really worried about how I was going to finally get my taxes in order, there was some pressing issues I wasn't sure I was going to be able to get handled. <u>Optima tax financial department director</u> really came through for me when they didn't have to <u>that really means a lot</u> to someone like me who doesn't have a lot of disposable income. I knew I called the right tax people when I got off the phone with the first representative they assured me I was doing the right thing by calling them and now I have proof I did the right thing. <u>Thank You again Optima crew.</u>
6	7	Load More Reviews	8	 Ken P I owed \$127,000 and settled for \$672. 16 August 2013, The IRS levied my pay checks. I immediately got on the internet and found Tax Relief Experts. I called Brian and he got everything started. Over the weekend I started thinking about what I had obligated myself to and I had some serious buyer's remorse. I called Brian and he talked to me, made me realize I still owed a assured me that I made the right decision. By Tuesday the IRS had the release of levy in my payroll department. TRE then started to assist me with the paperwork for filing an offer in compromise with the IRS. Keeping me updated as to how everything was going, what to expect and approximately how long everything would take. They did all the leg work of 10 years of back taxes. They made an offer to the IRS that I started paying on immediately. In July of 2014 I made the final payment to the IRS. They accepted the offer. I owed \$127,000 and settled for \$672. For the first time in the last 11 years I am solvent again.
9	Pam K This company has been a blessing to our family This company has been a blessing to our family. We had thousands of dollars in penalties from the IRS that we truly believed we didn't owe. We tried to do it ourselves and had absolutely no luck! We decided to get Tax Relief Experts to help us. Brian has taken care of us every step of the day. I can call him day or night and he always answers or calls me back immediately. He reassures me and goes over with me what will happen next. Maggie has been a lifesaver. Her calm demeanor has been a constant reassurance for me when I am breaking out. She gets the job done with the IRS. She is a resource and resourceful. She fought for us and stayed in close contact with us and the IRS. She has been a blessing in every way to our family. Thank you so much! You are the BEST! I can not begin to tell you how grateful we are.			

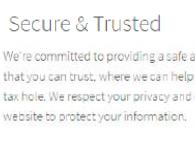
d. A second section with eight bullet points describing the services and relief that can be provided, including bullet points regarding Levies and Liens, Wage Garnishments, Tax Settlement, Tax Negotiation, and “Resolve Back Taxes.”

	WE CAN HELP	Here's What We Can Do For You
15	<ul style="list-style-type: none">• Tax Levies & Liens• Wage Garnishment• End Penalties & Interest• Tax Negotiation & Settlement	<ul style="list-style-type: none">• Settle your tax debt once and for all• Reduce IRS Tax Debt• Resolve Back Taxes• IRS Audit Defense• Payroll Tax Negotiation
16		
17		
18		
19		
20		
21	<h2>Optima Landing Page</h2>	<h2>Defendants' Infringing Website</h2>

e. The webpage title: the Optima Landing Page's title is "Solve Your Tax Debt Problems- Optima Tax Relief." Defendants' Infringing Website uses the confusingly similar title "Settle Your IRS Tax Debt."

f. A section regarding reasons to select the publisher to provide tax relief services, including graphics and text referring to (1) BBB

1 accreditation; (2) an expert staff; (3) a Money Back Guarantee;
 2 and (4) being “Safe & Trusted.”

WHY CHOOSE US		What Makes Us the Best in the Business?
	BBB Accredited	
	Money Back Guarantee*	
	Secure & Trusted	
Optima Tax Relief, LLC will refund monies paid under the Optima Tax Relief Client Agreement within the first 15 calendar days without any penalty or obligation.		
Optima Landing Page		
Defendants' Infringing Website		

29. Channel Clarity and Financial Freedom work together serve as an enhanced marketing lead generator for Safe Harbor, using the Infringing Website to obtain information and inquiries from consumers interested in tax relief services. Prior to the consumer information passing to Safe Harbor, Financial Freedom takes the leads generated from the Infringing Website published by Channel Clarity and uses information and marketing techniques provided by Safe Harbor to screen consumers. Financial Freedom is operated from the same office space as Channel

1 Clarity, receives operational support from Channel Clarity, and is managed by
 2 Channel Clarity's majority owner and chief executive officer, Brock Flagstad.

3 30. Financial Freedom's involvement in the lead generation process is not
 4 disclosed to consumers on the Infringing Webpage, obscuring the fact that consumer
 5 information is exposed to Financial Freedom's employees, including Brian Barss.
 6 Mr. Barss is subject to a restitution order based on his conduct in connection with a
 7 criminal mortgage fraud scheme. Financial Freedom, at Mr. Flagstad's direction,
 8 serves as a special purpose entity and helps Mr. Barss to circumvent a criminal
 9 restitution order by paying approximately two thirds of Mr. Barss' salary directly to
 10 his wife. Mr. Flagstad has admitted that Mrs. Barss is paid twice the salary of her
 11 husband solely because "Brian has a restitution commitment that doesn't afford him
 12 the ability to make more than" a certain amount, and that Mrs. Barss does "nothing"
 13 for the money she is paid by Financial Freedom.

14 31. Among other materials that Safe Harbor presented to Financial
 15 Freedom was a list of Safe Harbor's competitors in the tax relief industry, including
 16 Optima. On information and belief, Safe Harbor instructed Financial Freedom and
 17 Channel Clarity to create a website based upon Optima's trade dress.

18 32. Neither Channel Clarity nor Financial Freedom employ actual tax relief
 19 professionals or provide those services. Instead, they use the Infringing Website to
 20 obtain contact information for potential customers and vet those potential customers
 21 before providing that information to Safe Harbor. In exchange, Safe Harbor pays
 22 Financial Freedom a set majority percentage of revenue generated from customers
 23 provided by Channel Clarity and Financial Freedom. All money transactions with
 24 those consumers are handled by Safe Harbor. In turn, Financial Freedom transfers
 25 funds to Channel Clarity, nominally for both for the advertising that Channel Clarity
 26 buys (including a percentage premium on the purchases) and a variable Marketing
 27 Services fee, such that the majority of Financial Freedom's income from Safe
 28 Harbor is transferred to Channel Clarity.

33. Through this arrangement, Channel Clarity and Financial Freedom, both under the control of Brock Flagstad, act together as Safe Harbor's agent in maintaining, promoting, and using the Infringing Website for the purpose of finding clients for Safe Harbor.

CLAIMS FOR RELIEF

COUNT ONE—TRADE DRESS INFRINGEMENT

15 U.S.C. § 1125(a)(1)(A)

Against Brock Flagstad

9 34. Optima repeats and re-alleges each and every allegation above as if set
10 forth fully herein.

11 35. The design or trade dress of the Optima Landing Page, as shown on the
12 Attached **Exhibit A** and as set forth above including the elements copies or aped by
13 Channel Clarity at the direction and control of Brock Flagstad, including the overall
14 look and feel of the Optima Landing Page, as a whole, is arbitrary and non-
15 functional, and has become identified in the market as originating with Optima.

16 36. As a result of the sales, advertising, and market position of Optima, the
17 trade dress of the Optima Landing Page has developed and now has a secondary
18 meaning and distinctive trade dress meaning to potential customers or clients, in that
19 potential client have come to associate Tax Relief services bearing such trade dress
20 with Plaintiff Optima.

21 37. Subsequent to Optima's use and adoption of the above mentioned trade
22 dress, Channel Clarity, at the direction and under the control of Brock Flagstad, by
23 and through the Infringing Website, adopted advertising, trade dress, and a look and
24 feel for their website that is identical or confusingly similar to the Optima Landing
25 Page and trade dress, such that it misleads consumers to believe that the services
26 provided by Channel Clarity's lead buyers (*i.e.* Safe Harbor) originate from, or are
27 sponsored or endorsed by Optima.

1 38. These confusingly similar aspects include, without limitation: the
 2 overall “look” of the Infringing Website, which is presented in a style and manner
 3 so as to be confusingly similar to the Optima Landing Page, including, without
 4 limitation, copying: the color combinations; the arrangement of elements, graphics,
 5 and text; the content and phrasing of the text; and other elements copying and
 6 mimicking the Optima Landing Page’s creative construction.

7 39. More specifically, the willful and complete duplication of the Optima
 8 Landing Page, advertising materials and the like, from the style and positioning of
 9 each creative element to the content of the text and images, including, without
 10 limitation, color combinations and fonts, resulted in the Infringing Website, which,
 11 as an almost exact replica of Plaintiff’s Optima Landing Page, misleads customers
 12 to believe that Service provided to the customers “leads” sold (by Channel Clarity
 13 and Financial Freedom at that to competing tax service provider Safe Harbor
 14 originates from or is endorsed by Optima.

15 40. As a direct and proximate result of the wrongful acts as alleged herein,
 16 Channel Clarity and Brock Flagstad obtained unlawful profits for themselves and/or
 17 others to the express detriment of Optima. Optima is entitled to restitution of all
 18 monies improperly diverted from Optima and to Channel Clarity for its sale of
 19 potential customers or leads acquired as a result of the Infringing Website.

20 41. By reason of Channel Clarity and Brock Flagstad’s acts set forth above,
 21 Optima has been severely injured in its business and property. The injury to Optima
 22 is, and continues to be, immediate and irreparable. An award of monetary damages
 23 alone cannot fully compensate Optima for its injuries and Optima lacks an adequate
 24 remedy at law.

25 42. Plaintiff Optima is informed and believes, and on that basis alleges, that
 26 Channel Clarity and Brock Flagstad committed their copying and acts of trade dress
 27 infringement willfully and maliciously in that they intended by their infringing
 28 conduct to gain business and a share of the Tax Relief customers in the marketplace

1 at the expense of Optima's profits and market share. The foregoing acts of
 2 infringement have been, and continue to be, deliberate, willful and wanton, making
 3 this an exceptional case within the meaning of 15 U.S.C. § 1117.

4 **COUNT TWO—COPYRIGHT INFRINGEMENT**

5 **17 U.S.C. Secs. 106 *et seq.* and 501**

6 **Against Brock Flagstad**

7 43. Optima repeats and re-alleges each and every allegation above as if set
 8 forth fully herein.

9 44. The Optima Website and the Optima Landing Page therein are original,
 10 creative works that constitutes copyrightable subject matter under the Copyright
 11 Act, 17 U.S.C. §§ 101 *et seq.* Optima has secured the exclusive rights and
 12 privileges in and to the above referenced copyrighted work, and in compliance with
 13 the law has registered the Optima Landing Page in the Register of Copyrights as
 14 "Optima Tax Relief Multistep Landing Page Q3 2013", Registration Number
 15 VA0001938343, which constitutes *prima facie* evidence of the validity of the
 16 copyrights in the work and of the facts stated therein. At all relevant times, Optima
 17 has owned all applicable rights, titles and interest in and to this copyrighted work.

18 45. On information and belief, Channel Clarity and its CEO Brock Flagstad
 19 were aware of and had viewed the original and creative content embodied within the
 20 Optima Landing Page, and then subsequently altered the Infringing Website in order
 21 to copy the protected and copyrightable elements of the Optima Landing Page.
 22 Specifically, Brock Flagstad directed that revisions to tax-relief-experts.com should
 23 make it look like the Optima Landing Page by sending links directly to the URL of
 24 the Optima Landing Page, after being informed of Optima's success in the tax relief
 25 industry, and by approving redesigns that copied the protected expressions therein.

26 46. By its actions alleged in the paragraphs above, Brock Flagstad has
 27 directed Channel Clarity to infringe and will continue directing Channel Clarity to
 28 infringe Optima's copyright in the Optima Website and the Optima Landing Page

1 by, *inter alia*, copying, publicly displaying, and distributing the Infringing Website,
2 which is substantially similar to and derived from the Optima Landing Page, without
3 any authorization or other permission from Optima. Mr. Flagstad has directly
4 participated in and directed Channel Clarity to violate Optima's exclusive rights
5 under 17 U.S.C. § 106.

6 47. On information and belief, Mr. Flagstad's infringement of Optima's
7 copyrights has been deliberate, willful and in utter disregard of Optima's rights.

8 48. Mr. Flagstad has caused Channel Clarity and Financial Freedom to
9 realize unjust profits, gains and advantages as a proximate result of his instruction to
10 infringe, and he and his companies will continue to realize unjust profits, gains and
11 advantages as a proximate result of its infringement as long as such infringement is
12 permitted to continue.

13 49. As a direct and proximate result of Defendants' willful copyright
14 infringement, Optima has suffered, and will continue to suffer actual damages.
15 Optima is entitled to its actual damages and any gains, profits, and advantages
16 obtained by Defendants as a result of their acts of infringement and its use and
17 publication of the copied materials, 17 U.S.C. § 504(b).

18 50. Optima has no adequate remedy at law for the injuries currently being
19 suffered, and the additional injuries that are threatened, and Channel Clarity will
20 continue to engage in its wrongful conduct and Optima will continue to suffer
21 irreparable injury that cannot be adequately remedied at law unless Defendants are
22 enjoined from engaging in any further such acts of infringement. Optima is entitled
23 to an injunction restraining Defendants from engaging in any further such acts in
24 violation of the United States copyright laws, 17 U.S.C. § 502.

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COUNT THREE—CONTRIBUTORY TRADE DRESS INFRINGEMENT**15 U.S.C. § 1125(a)(1)(A)****Against Financial Freedom, Safe Harbor, and Brian Barss**

51. Optima repeats and re-alleges each and every allegation above as if set forth fully herein.

52. As set forth above, the design or trade dress of Plaintiff's Optima Landing Page, as shown on the Attached **Exhibit A** and as set forth above including the elements copies or aped by Channel Clarity at the direction of Brock Flagstad, including the overall look and feel of the Optima Landing Page, as a whole, is arbitrary and non-functional, and has become identified in the market as originating with Optima.

53. On information and belief, Safe Harbor is a direct competitor of Plaintiff Optima that pays Financial Freedom directly (and Channel Clarity indirectly) for "leads" or information regarding potential clients from Channel Clarity's Infringing Website. Further on information and belief, the Financial Freedom, Brian Barss, and Safe Harbor have knowledge of Optima's arbitrary and distinctive trade dress (as Optima is the leading Tax Relief service in the country) and have knowledge of Channel Clarity's copying and infringement of Optima's trade dress, due to having pointed out Optima as a successful competitor in the tax debt relief industry. Despite this knowledge, Safe Harbor, Brian Barss, and Financial Freedom have continued to provide material support to Channel Clarity and/or inducement for Channel Clarity to continue its infringement of Optima's trade dress as embodied on the Optima Landing Page by continuing to purchase leads generated through the Infringing Website, among other acts of support and inducement.

54. On information and belief, the acts of Financial Freedom, Safe Harbor, and Brian Barss in supporting Channel Clarity's infringement of Optima's trade dress have been deliberate, willful, and intentional, with full knowledge and/or in

1 conscious disregard of Plaintiff Optima's rights in its trade dress and with intent to
 2 trade off Optima's vast goodwill for their own benefit.

3 55. As a result of the foregoing actions of Financial Freedom, Safe Harbor,
 4 and Brian Barss, these defendants are being unjustly enriched and Optima is being
 5 injured and damaged. Unless enjoined by this Court, the Financial Freedom, Safe
 6 Harbor, and Brian Barss will continue to engage in the aforesaid acts of contributory
 7 trade dress infringement, thereby causing Plaintiff Optima irreparable injury for
 8 which it has no adequate remedy at law.

9 **COUNT FOUR—DERIVATIVE COPYRIGHT INFRINGEMENT**

10 **Against Financial Freedom and Safe Harbor**

11 56. Optima repeats and re-alleges each and every allegation above as if set
 12 forth fully herein.

13 57. As set forth above, the Optima Landing Page is an original, creative
 14 works that constitutes copyrightable subject matter under the Copyright Act, 17
 15 U.S.C. §§ 101 *et seq.* Optima has secured the exclusive rights and privileges in and
 16 to the above referenced copyrighted work, and in compliance with the law has
 17 registered the Optima Landing Page in the Register of Copyrights as “Optima Tax
 18 Relief Multistep Landing Page Q3 2013”, Registration Number VA0001938343,
 19 which constitutes *prima facie* evidence of the validity of the copyrights in the work
 20 and of the facts stated therein. At all relevant times, Optima has owned all
 21 applicable rights, titles and interest in and to this copyrighted work.

22 58. As set forth above, Financial Freedom and Safe Harbor have
 23 contributed to the direct infringement of the Optima Landing Page, inducing,
 24 causing, or materially contributing to the infringement. Financial Freedom and Safe
 25 Harbor have continued their relationship with the Infringing Website and directly
 26 benefitted from its publication with full knowledge of the infringement. Financial
 27 Freedom and Safe Harbor have continued to take in *all* customers generated by the
 28 Infringing Website, paying Channel Clarity to continue its infringement.

1 59. On information and belief, as a result of their control over payments to
 2 Channel Clarity for “leads” generated by the Infringing Website, and due to their
 3 prior direction of Channel Clarity to copy the Optima Landing Page, both Financial
 4 Freedom and Safe Harbor have had the right and ability to control the infringing
 5 activity by Channel Clarity, but have allowed it to continue in order to obtain a
 6 direct financial benefit from the infringement.

7 60. On information and belief, Safe Harbor and Financial Freedom’s
 8 contribution to the direct infringement of Optima’s copyrights has been deliberate,
 9 willful and in utter disregard of Optima’s rights.

10 61. Safe Harbor and Financial Freedom have realized unjust profits, gains
 11 and advantages as a proximate result of their contribution to the infringement, and
 12 they will continue to realize unjust profits, gains and advantages as a proximate
 13 result of its infringement as long as such infringement is permitted to continue.

14 62. As a direct and proximate result of Defendants’ willful inducement of
 15 and contribution to copyright infringement, Optima has suffered, and will continue
 16 to suffer actual damages. Optima is entitled to its actual damages and any gains,
 17 profits, and advantages obtained by Defendants as a result of their acts of
 18 infringement and its use and publication of the copied materials, 17 U.S.C. § 504(b).

19 63. Optima has no adequate remedy at law for the injuries currently being
 20 suffered, and the additional injuries that are threatened, and defendants will continue
 21 to engage in its wrongful conduct and Optima will continue to suffer irreparable
 22 injury that cannot be adequately remedied at law unless defendants are enjoined
 23 from engaging in any further such acts of infringement. Optima is entitled to an
 24 injunction restraining defendants from engaging in any further such acts in violation
 25 of the United States copyright laws, 17 U.S.C. § 502.

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COUNT FIVE—UNFAIR COMPETITION- FALSE ADVERTISING**15 U.S.C. § 1125(a)(1)(B) *et seq.*****Against All Defendants**

44. Optima repeats and re-alleges each and every allegation above as if set
 45 forth fully herein.

65. The Infringing Website is a commercial advertising or promotion in
 7 connection with services actually provided by Safe Harbor. As set forth above, the
 8 Infringing Website that presents a false designation of origin of such services by
 9 adopting the trade dress of Optima in a manner likely to cause confusion or mistake
 10 as to the affiliation and misleading descriptions and

11 66. Defendants have willfully and knowingly made use of the Infringing
 12 Website, an infringement of Plaintiff's distinctive and arbitrary trade dress and its
 13 creative work in the advertisement in order to improperly trade on Optima's renown
 14 and good will.

15 67. The Infringing Website further misrepresents the nature, characteristics,
 16 qualities, or geographic origin of the services and commercial activities advertised
 17 therein by (1) portraying the source of the advertisement as a provider of Tax Relief
 18 services with its own staff of tax professionals rather than a lead generator, the
 19 Infringing Website misleadingly attributes the approvals, affiliations, and
 20 endorsements (including the A+ BBB rating with “ZERO complaints”) for Tax-
 21 Relief-Experts (published by Channel Clarity) to Financial Freedom (specifically
 22 including an endorsement of “Brian” (i.e. Brian Barss) claiming that he actually
 23 provided tax relief services) and/or Safe Harbor, preventing the public from
 24 evaluating the true credentials of the hidden middleman and tax relief service
 25 provider before providing their information; and (2) making statements such as
 26 “lower the amount you have to pay” and “Settle your tax debt once and for all,” that
 27 mislead the public into believing that the defendants can get all of their clients Offer
 28

1 in Compromise settlements to reduce the principal amount owed to the IRS or other
2 tax agencies.

3 68. Defendants have acted together to use the Infringing Website to obtain
4 clients in direct competition with Optima. On information and belief, customers that
5 would otherwise select Optima for the provision of tax relief services have
6 contracted with Safe Harbor for the provision of tax relief services as a result of the
7 misleading and confusing Infringing Website.

8 69. As a result of the foregoing actions of Defendants, Defendants have
9 been unjustly enriched, and Plaintiff Optima has been injured and damaged. Unless
10 enjoined by this Court, Defendants will continue said acts of unfair competition,
11 thereby causing Plaintiff Optima immediate and irreparable injury for which there is
12 no adequate remedy at law.

COUNT SIX—UNFAIR BUSINESS PRACTICES

BUS & PROF. CODE § 17200 *et seq.*

Against All Defendants

16 70. Optima repeats and re-alleges each and every allegation above as if set
17 forth fully herein.

18 71. Beyond the other acts set forth above, Defendants have willfully and
19 knowingly made use of an infringement of Plaintiff's distinctive and arbitrary trade
20 dress and its creative work in the advertisement in order to improperly trade on
21 Optima's renown and good will.

22 72. Defendants further improperly maintain the fraud that the entity
23 maintaining the Infringing Website is the same entity that actual provides tax relief
24 services to the potential customers providing their information at the Infringing
25 Website. In so doing, Defendants also hide from consumers that Financial Freedom
26 (through its primary salesperson Brian Barss) acts as a hidden middleperson that
27 collects sensitive tax and financial information from consumers that engage with the

1 Infringing Website and then Financial Freedom passes such information to Safe
2 Harbor.

3 73. As a cause of action and ground for relief, Plaintiff Optima alleges that
4 Defendants jointly and severally are engaged in unlawful, unfair, and or fraudulent
5 business practices in violation of Cal. Bus. & Prof. Code § 17200 *et seq.*

6 74. As a direct result of Defendants' unfair competition, Defendants have
7 unlawfully acquired, and continue to acquire on an ongoing basis, an unfair
8 competitive advantage and have engaged, and continue to engage, in wrongful
9 business conduct to their advantage and to the detriment of Plaintiff Optima.

10 75. The acts of Defendants complained of herein constitute unfair
11 competition in violation of the California Unfair Competition Statute, Cal. Bus. &
12 Prof. Code § 17200, as they are likely to deceive and mislead the public.

13 76. As a result of the foregoing actions of Defendants, Defendants have
14 been unjustly enriched, and Plaintiff Optima has been injured and damaged. Unless
15 enjoined by this Court, Defendants will continue said acts of unfair competition,
16 thereby causing Plaintiff Optima immediate and irreparable injury for which there is
17 no adequate remedy at law.

COUNT SEVEN—FALSE ADVERTISING

BUS & PROF. CODE § 17500 et seq.

Against All Defendants

21 77. Optima repeats and re-alleges each and every allegation above as if set
22 forth fully herein.

23 78. Channel Clarity and the Defendants have committed acts of untrue and
24 misleading advertising, as defined by Business and Professions Code section 17500,
25 by engaging in the acts and practices connected with their publishing and/or
26 contributing to the publishing of Channel Clarity's Infringing Website with the
27 intent to induce members of the public to provide information to Channel Clarity,
28 which in turn provides the information to Financial Freedom, who then uses the

1 information to generate screened leads which are sold to Safe Harbor for a
2 percentage of the value of the resulting contractual relationships with Safe Harbor
3 for its provision of Tax Relief services.

4 79. The acts of misleading and untrue advertising by Channel Clarity and
5 the Defendants present a continuing threat to the members of the public, including
6 the following dangers:

- 7 a. the Infringing Website falsely gives the impression that it is
8 published by, endorsed by, or otherwise affiliated with plaintiff
9 Optima;
- 10 b. the Infringing Website portrays the source of the advertisement
11 as a provider of Tax Relief services with its own staff of tax
12 professionals rather than a lead generator, the Infringing Website
13 misleadingly attributes the approvals, affiliations, and
14 endorsements (including the A+ BBB rating with “ZERO
15 complaints”) for Tax-Relief-Experts (published by Channel
16 Clarity) to Financial Freedom (specifically including an
17 endorsement of “Brian” (i.e. Brian Barss) claiming that he
18 actually provided tax relief services) and/or Safe Harbor,
19 preventing the public from evaluating the true credentials of the
20 hidden middleman and tax relief service provider before
21 providing their information; and
- 22 c. Through the Infringing Website’s statements such as “lower the
23 amount you have to pay” and “Settle your tax debt once and for
24 all,” Channel Clarity and the defendants mislead the public into
25 believing that the defendants can get all of their clients Offer in
26 Compromise settlements to reduce the principal amount owed to
27 the IRS or other tax agencies.

1 80. Plaintiff and the public have no adequate remedy at law to prevent the
2 ongoing harm caused by Defendants' misleading and untrue advertising in
3 connection with the publication of the Infringing Website. Unless enjoined by this
4 Court, the defendants will continue said acts of misleading and false advertising,
5 thereby causing Plaintiff Optima immediate and irreparable injury for which there is
no adequate remedy at law

PRAYER FOR RELIEF

WHEREFORE, plaintiff Optima Tax Relief requests that:

1. Judgment be entered for Plaintiff Optima Tax Relief on each of its affirmative claims for relief;
2. Defendants, their officers, directors, agents, representatives, successors or assigns, and all persons acting in concert or in participation with any of them be immediately and permanently enjoined from:
 - a. Infringing plaintiff's trade dress by copying and using Defendant's Infringing Website or any colorable imitation of plaintiff's trade dress;
 - b. Infringing Plaintiff Optima's copyrights by continuing to publish and disseminate the Infringing Website or any other derivative work of the Optima Landing Page or any other part of the Optima Website;
 - c. Continuing to mislead or deceive the public about the nature of the relationship between Channel Clarity and the Defendants who purchase leads for tax relief service;
 - d. Doing any other acts or things calculated or likely to cause confusion or mistake in the mind of the public or to lead purchasers, consumers, or investors into the belief that the products or services promoted, offered, or sponsored by Defendants emanate from or originate with Plaintiff Optima or

their licensees, or are somehow sponsored, licensed, endorsed, authorized, affiliated, or connected with Plaintiff and/or originate from Plaintiff; and

e. Contributing to, inducing to, or providing material support to others for their acts constituting any of the above acts.

3. For actual damages and an accounting according to proof, but in no event less than \$1,000,000;

8 4. Defendants to be required to pay to plaintiff such damages as plaintiff
9 has sustained in consequence of the infringement of Optima's trade dress and
10 copyright and Defendants' unfair trade practices and unfair competition, and to
11 account for:

a. All gains, profits and advantages derived by Defendants through such trade practices and unfair competition; and

b. All gains, profits and advantages derived by Defendants through the Infringing Website's infringement of Optima's copyright, or such damages as to the court shall appear proper.

17 5. Defendants pay to Optima the costs of this action and reasonable
18 attorney's fees to be allowed Optima by the court;

6. Optima be awarded prejudgment and post-judgment interest; and

20 7. Optima have such other and further relief in law or equity to which it
21 may be entitled or which the Court deems just and proper.

22 | DATED: August 19, 2015 Respectfully submitted,

RAINES FELDMAN, LLP

By: 
ERIK S. SYVERSON
Attorneys for Plaintiff
OPTIMA TAX RELIEF, LLC

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial as provided by Rule 38(a) of the Federal Rules of Civil Procedure and L.R. 38-1.

4 | DATED: August 19, 2015 Respectfully submitted,

RAINES FELDMAN, LLP

By: ERIK S. SYVERSON
Attorneys for Plaintiff
OPTIMA TAX RELIEF, LL